

**UNITED STATES OF AMERICA
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

UNITED STATES OF AMERICA	§	
	§	
v.	§	NO. 7:16-CR-01589-3
	§	
ELIZABETH LOPEZ-PEREZ	§	

MOTION TO DISMISS: SPEEDY TRIAL

COMES NOW, Elizabeth Lopez-Perez, hereinafter referred to as Defendant in the above-entitled and numbered cause, by and through attorney Noé D. Garza, Jr., on a motion to dismiss the Indictment filed against Elizabeth Lopez-Perez on November 1, 2016. Defendant will show the Court that the Speedy Trial Act, 18 U.S.C. § 3161 et seq has been violated in the instant case.

I.

Defendant has been charged by Indictment filed on November 1, 2016, with the offenses of conspiring to possess and possession with intent to distribute a controlled substance, in violation of Title 21 U.S.C. § 846, 841(a)(1), 841(b)(1)(A), 841(b)(1)(B) and 18 U.S.C. § 2.

II.

On or about November 4, 2016, Defendant was arrested on charges of conspiring to possess and possession with intent to distribute more than 5 kilos of cocaine.

On or about November 7, 2016, Defendant appeared before United States Magistrate Judge Peter C. Ormsby for purposes of her initial appearance on her charges for conspiring to possess and possession with intent to distribute more than 5 kilos of cocaine.

On or about November 14, 2016, Defendant was arraigned in the above-entitled and numbered cause and ordered detained pending her trial. United States Magistrate Peter C. Ormsby set Defendant's case for a final pretrial on January 3, 2017, and for jury selection January 4, 2017.

Since the scheduling order was issued by United States Magistrate Peter C. Ormsby on November 14, 2017, Defendant's trial has been reset 6 times. Defendant has been in custody approximately 391 days.

III.

Counsel has reviewed the Government's file and finds that it is not a complex case that necessitates to be continued in order for the government or any of the Defendant's pending trial to prepare.

IV.

Defendant has been denied the right to a speedy trial in violation of Defendant's 6th Amendment Right under the United States Constitution.

V.

The pertinent violation occurred as set out in 18 U.S.C. § 3161(c)(1):

"In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an

offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer or the court in which such charge is pending, whichever date last occurs."

In this case, more than 394 days have elapsed since the filing of the indictment on November 1, 2016, and the Defendant's initial appearance before the United States Magistrate Peter C. Ormsby on these charges on November 7, 2016.

VI.

The Court is compelled to dismiss the charges against Elizabeth Lopez-Perez, 18 U.S.C. § 3162(a)(2). However, the Court has the discretion to dismiss with or without prejudice. United States v. May, 819 F.2d 533, 531 (5th Cir. 1987). "In exercising its discretion, the trial court must consider: (1) the seriousness of the offense; (2) the facts and circumstances of the case which led to the dismissal; and (3) the impact of a re-prosecution on the administration of the Act and on the administration of justice".

WHEREFORE, Defendant prays unto this Court that the criminal charges against Elizabeth Lopez-Perez be dismissed with prejudice.

Respectfully submitted,

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BY: /s/Noé D. Garza, Jr.
Noé D. Garza, Jr.
State Bar No. 07736010
Federal ID No. 8652
ATTORNEY FOR DEFENDANT
Elizabeth Lopez-Perez

CERTIFICATE OF SERVICE

I, Noé D. Garza, Jr., do hereby certify that a true and correct copy of the Motion to Dismiss: Speedy Trial has been forwarded to the United States Attorney's Office, 1701 West Business Highway 83, Suite 600, McAllen, Texas 78501, on this 1st day of December, 2017.

/s/ Noé D. Garza, Jr. _____
Noé D. Garza, Jr.

CERTIFICATE OF CONFERENCE

I, Noé D. Garza, Jr., do hereby certify that on December 1, 2017, I did contact Assistant United States Attorney, Patricia Cook Profit, with regard to her position as to Defendant's Motion to Dismiss: Speedy Trial, and she advised that she did oppose Defendant's Motion.

/s/ Noé D. Garza, Jr.

Noé D. Garza, Jr.